APPENDIX

Exhibit "A"

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Wednesday, August 19, 1981

No. 13,813

STATE OF NEW MEXICO, ex rel RICHARD ROCK, *Petitioner,*

vs.

HON. HARRY E. STOWERS, JR., District Judge, *Respondent.*

Original Prohibition Proceeding

This matter coming on for consideration by the Court upon petition for alternative writ of prohibition, and the Court having considered said petition and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that petition for writ of prohibition be and the same is hereby denied.

ATTEST: A TRUE COPY

/s/ ROSE MARIE ALDERITE
Clerk of the Supreme Court
of the State of New Mexico

Exhibit "O"

TREATY WITH THE NAVAJO INDIANS
June 1, 1868

Treaty between the United States of America and the Navajo Tribe of Indians; Concluded June 1, 1868; *Ratification advised July* 25, 1868; *Proclaimed* August 12, 1868.

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES OF AMERICA,
TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME,
GREETING:

WHEREAS a treaty was made and concluded at Fort Sumner, in the Territory of New Mexico, on the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Lieutenant-General W. T. Sherman and Samuel F. Tappan, commissioners, on the part of the United States, and Barboncito, Armijo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit: —

Articles of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo nation or tribe of Indians, represented by their chiefs and headmen, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and headmen being hereto subscribed,) of the other part, witness: —

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The govern-

ment of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner

* * * * * * * * * *

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendents as may be thought proper.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years.

ARTICLE VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian—each Indian being

encouraged to manufacture their own clothing, blankets, &c.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

Article IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to

justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2nd. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3rd. That they will not attack any persons at home or travelling, nor molest or disturb any wagon trains, coaches, mules or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or headman of the tribe.

7th. They will make no opposition to the military posts or trade now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least

three fourths of all the adult male Indians involved or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article —— of this treaty.

ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

ARTICLE XII. It is further agreed by and between the parties to the agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any conditions provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Basque Rodondo reservation to the reservation, say fifty thousand dollars.

2nd. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3rd. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supervision of and direction of the military commander of

the Territory of New Mexico, and when completed, the management of the tribe to revert to the proper agent.

ARTICLE XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart from the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart from the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W. T. SHERMAN,
Lt. Gen'l, Indian Peace Commissioner.

S. F. TAPPAN,
Indian Peace Commissioner.

BARBONCITO, Chief.	his x mark.
ARMIJO.	his x mark.
DELGADO.	
MANUELITO.	his x mark.
LARGO.	his x mark.

HERRERO.	his x mark.
CHIQUETO.	his x mark.
MUERTO DE HOMBRE.	his x mark.
HOMBRO.	his x mark.
NARBONO.	his x mark.
NARBONO SEGUNDO.	his x mark.
GANADO MUCHO.	his x mark.

Council.

RIQUO.	his x mark.
JUAN MARTIN.	his x mark.
SERGINTO.	his x mark.
GRANDE.	his x mark.
INOETENITO.	his x mark.
MUCHACHOS MUCHO.	his x mark.
CHIQUETO SEGUNDO.	his x mark.
CABELLO AMARILLO.	his x mark.
FRANCISCO.	his x mark.
TORIVIO.	his x mark.
DESDENDADO.	his x mark.
JUAN.	his x mark.
GUERO.	his x mark.
GUGADORE.	his x mark.
CABASON.	his x mark.
BARBON SEGUNDO.	his x mark.
CABARES COLORADOS.	his x mark.

Attest:

GEO. W. G. GETTY,
Col. 37th Inf'y, Bt. Maj. Gen'l U. S. A.

B. S. ROBERTS,
Bt. Brg. Gen'l U. S. A., Lt. Col. 3d Cav'y.

J. COOPER MCKEE,
Bt. Lt. Col. Surgeon U. S. A.

THEO. H. DODD,
U. S. Indian Ag't for Navajos.

CHAS. MCCLURE,
Bt. Maj. and C. S. U. S. A.

JAMES F. WEEDS,
Bt. Maj. and Asst. Surg. U. S. A.

J. C. SUTHERLAND,
Interpreter.

WILLIAM VAUX,
Chaplain U. S. A.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:—

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
July 25, 1968.

***Resolved,* (two-thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the treaty between the United States and the Navajo Indians, concluded at Fort Sumner, New Mexico, on the first day of June, 1868.**

Attest:

GEO. C. GORHAM,
Secretary,
By W. J. McDONALD,
Chief Clerk.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-fifth of July, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the City of Washington, this twelfth day of August, in the year of our Lord one thousand [SEAL.] eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

ANDREW JOHNSON.

By the President:

W. HUNTER,

Acting Secretary of State.

Exhibit "P"

LEGISLATIVE HISTORY
P.L. 95-608

The Supreme Court has, time and again, upheld the sweeping power of Congress over Indian matters. The cases are far too numerous to cite, but two cases will serve to exemplify this position. In *U.S.* v. *Kagama*, 118 U.S. 375 (1886)[3] the Court said:

> These Indian tribes are wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.

And in *United States* v. *Nice*, 241 U.S. 591 (1916),[10] the Court held:

> The power of Congress to regulate or prohibit traffic with tribal Indians within a State whether upon or off

1. 6 L.Ed. 23.
2. 65 S.Ct. 1373, 89 L.Ed. 1782.
3. 88 S.Ct. 362, 19 L.Ed.2d 438.
4. 88 S.Ct. 2096, 20 L.Ed.2d 1166.
5. 91 S.Ct. 1704, 29 L.Ed.2d 233.
6. 23 L.Ed. 833.
7. 67 S.Ct. 810, 91 L.Ed. 967.
8. 8 L.Ed. 483.
9. 6 St.Ct. 1109, 30 L.Ed. 228.

> an Indian reservation is well settled * * *. Its source is twofold; first, the clause of the Constitution expressly investing Congress with authority "to regulate Commerce * * * with the Indian tribes", and, second, the dependent relation of such tribes to the United States.

It cannot be questioned that Congress has broad, unique powers with respect to Indian tribes and affairs. There is only one caveat: While those powers may be plenary, the exercise may not be arbitrary. For example, Congress may not take Indian property without just compensation nor may it establish a religion for Indian tribes.

Plenary power and child welfare

The question then is: "Is the regulation of child custody proceedings and the imposition of minimum Federal standards an appropriate exercise of Congress plenary power over Indian affairs?"

We need only cite three cases to lay the foundation for the power of Congress to legislate in this area. In *U.S.* v. *Holliday*, 70 U.S. 407 (1866),[11] the Court said:

> Commerce with foreign Nations, **without doubt**, means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals. And so commerce with Indian tribes means commerce with the individuals composing those tribes.

Exhibit "X"

STATE OF NEW MEXICO COUNTY OF BERNALILLO

IN THE DISTRICT COURT

No. DR 79-01505

ESTHER ANTONIO, *Plaintiff*,

vs.

RICHARD ROCK, *Defendant*.

MOTION TO COMPEL DISCOVERY

COMES Now the Plaintiff, Esther Antonio, by her attorney, Leo C. Kelly, and moves the Court for an Order directing the Defendant, Richard Rock to answer questions propounded to him in the taking of his deposition on February 2, 1981, at which time Richard Rock, by his attorney, Eugene Klecan, objected to a number of questions on various grounds. The following questions and answers thereto are the questions on which the Plaintiff moves the Court to Order answers:

Q. Are you acquainted, Dr. Rock, with a lady named Esther Antonio?

MR. KLECAN: I object and instruct you not to answer. We raise the Fifth Amendment.

THE WITNESS: I respectfully raise the Fifth Amendment to that question.

Q. Have you ever met a woman named Esther Antonio?

MR. KLECAN: We again instruct the Fifth Amendment is being applied.

THE WITNESS: I respectfully raise the Fifth Amendment.

Q. Have you ever met or are you acquainted with a child named Rachel Antonio?

MR. KLECAN: We raise the Fifth.

Q. Do you have knowledge of any person who had sexual intercourse with Esther Antonio during the months of July, August, and September of 1974?

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

Monday, August 31, 1981

No. 13,813

STATE OF NEW MEXICO, ex rel RICHARD ROCK, *Petitioner,*

vs.

HONORABLE HARRY E. STOWERS, JR.
District Judge, *Respondent.*

NOTICE OF APPEAL

COMES Now the Defendant, Richard Rock, and hereby appeals to the United States Supreme Court from the final Order of the Supreme Court of the State of New Mexico, entered August 19, 1981, denying Defendant's Petition for Writ of Prohibition in an original prohibition proceeding in the Supreme Court of New Mexico. Appeal to this Court is taken pursuant to 28 U.S.C. § 1257.

KLECAN & ROACH, P.A.
/s/ JANET SANTILLANES
Janet Santillanes
Attorney for Petitioner
520 Sandia Savings Bldg.
Albuquerque, NM 87102
(505) 243-7731

Appendix

Transcribed statement of State Trial Court Judge Stowers related to jurisdiction and Indian Paternity cases: In deciding that the State District Court has jurisdiction, Judge Stowers stated:

> "This Court is not bound by any federal regulation in terms of a paternity suit."
>
> • • • •
>
> "I don't think that the State of New Mexico delegated to the federal government exclusive jurisdiction over matters involved in this Court in a paternity suit in the State of New Mexico. In exercising the sovereignty this state has retained and the fact this particular plaintiff has chosen to submit herself to the jurisdiction of this Court, I think is a valid exercise and proper, and your motion to dismiss for lack of jurisdiction is denied.

In referring to Tribal Laws, Judge Stowers said:

> "How would that court have any jurisdiction over Doctor Rock?"

Esther Ruth Antonio

was called as a witness by the Defendant, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KLECAN:

Q. Would you state your name.
A. Esther Ruth Antonio.

Q. And you know your date of birth?
A. April 3, 1938.

Q. Where?
A. Rehoboth, New Mexico.

Q. Is that on the Navajo Reservation?
A. Yes.

Q. Where you born in the hospital?
A. At the Mission Rehoboth Hospital.
A. My father is dead.

Q. When did he die?
A. Two years ago.

Q. Where?
A. On the reservation.

Q. Do you know his census number, offhand?
A. No.

Q. Was he a Navajo Indian?
A. He's a full-blooded Navajo.

Q. Is your mother a full-blooded Navajo?
A. Yes.

Q. Where they married in any kind of ceremony?
A. Indian ceremonial.

Q. Indian ceremonial?

A. It's not recognized—I think it's common law in the white man's law.

Q. Are you telling me that you think that the white man's legal name for it would be a common law marriage?
A. Yes, that's what they call it.

Q. Were you given a census number?
A. Yes, but I don't know.

Q. And your mother is still alive?
A. My mother is still alive.

Q. Is she married to anybody now?
A. No.

Q. She's not living with any man?
A. No.

Q. Do you know when she and Largo split the blanket?
A. About two years after.

Q. Then there was an intervening marriage in there?
A. I don't know that one. There's a middle one. I don't know about that. That's the last one.

Q. If you live together, that's marriage, Navajo style?
A. That's marriage.

Q. What name do they give whereby they might be living in the hogan? Is that where you live, in a hogan?
A. We have a hogan for my mother. We have a house.

Q. You have a house, too?
A. Yes.

Q. Where is the house?
A. Right next to the hogan?

Q. And where is that located?
A. Coolidge, New Mexico.

Q. Is this your family home, so to speak?
A. Yes.

Q. Coolidge, New Mexico? And who lives there now?
A. My mother, the whole family.

Q. Is that in Arizona or New Mexico?
A. New Mexico.

Q. Where is that located in relationship to Crownpoint?
A. It covers the Crownpoint area and all the way down to Zuni, I think.

Q. It's the Eastern part of the reservation?
A. Yes.

Q. Crownpoint is right on there?
A. Yes, that's where the subagency is.

Q. Now, your whole family lives there? That's near Crownpoint, I understand?
A. Yes.

Q. But it is on the reservation?
A. Yes.

Q. Let me go back over this again, what you call something similar to divorce. When that takes place, the father leaves?
A. Yes.

Q. And then the children are not supported by him?
A. No, the mother does.

Q. The mother has the duty to take care of the children?
A. Well, she has all the wealth from the previous marriage. She has the horses, the cows, whatever, included.

Q. Regardless of whether she divorces, takes up with another man or whether he's the one that takes up with another woman?
A. Yes.

Q. It doesn't make any difference, the mother gets all the property in the divorce?
A. Yes.

Q. And the father, according to Navajo custom, doesn't have any responsibility to furnish anything for the children?

A. No.

Q. That's the way is happened in your case?

A. Yes.

Q. How many sisters do you have, full sisters?

A. Two.

Q. Now, I think you told us that in June of '74 you quit at Crownpoint and you were living up there. Did you let your house go right away up there, or did you continue to hold it for awhile in '74?

A. You had to move out of the government houses when you quit a government job.

Q. I am asking how quick.

A. As soon as you quit.

Q. You did get out that day, or thereabouts. Where did you go then?

A. To my mother's spare home.

Q. Was that in Coolidge?

A. Yes.

Q. Is this the hogan or the house?

A. It's the extra home they have at a hogan.

Q. In an affidavit that you filed in this case, in Paragraph 5, you said that during the month of September you had sexual relations with Richard Rock at the Travelodge Motel on Central Avenue near Interstate Highway 25. My question is, was this after you came back from your mother's house?

A. Yes.

Q. All right. And you say yes. Do you recall, were you registered at the Travelodge Motel at this time?

A. Yes.

Referring to family Indian life on the Navajo Reservation, she said:

Q. I am talking about the birth certificate. Have you ever seen it.

A. No, not on the birth certificate, this is on the Indian census.

Q. Where is that located?

A. Crownpoint.

Q. So you did register her in Crownpoint and got a census number?

A. Yes.

Q. What is her census number?

A. I don't have it. I couldn't tell you.

Q. But she does have one.

A. She does have one, but I couldn't tell you.

Q. What is your census number.

A. I couldn't tell you, either.

Q. And who was living, then in the home? You and Dolores?

A. Me and Dolores and Grandpa, when he was still living.

Q. And Grandpa was still living at that time, and that is your mother's father.

A. My mother's son by clan. It has to do with—it's really —forget it.

Q. No, we would like to know.

A. It's a clan situation where it's a son to her.

Q. A son to who?

A. To my mother.

Q. How does that come about?

A. It's a long story, you couldn't possibly cover in this thing. If you want to know, just go to, you know, some

anthropologist, they will tell you what clans are, and why they are really cared for, older people. White people wouldn't care, they would just throw them out or put them in a nursing home and forget about it, or to a mental health hospital, but we care for our own elderly people.

Q. How old was he?
A. Eighty-two.

Q. My question was, that seemed to provike this, I understood this to be your mother's father.
A. No, my mother's son.

Q. Your mother's son.
A. It's a clan deal that has been for years here. I don't know, I don't understand, but it's honored.

Q. What relationship, if any, was he to your mother?
A. A son.

Q. By adoption?
A. No, by clan. It's ancient history. If you want to know you can go find out. The anthropologists will tell you about it.

Q. Anyway, he was living there at this house. Who else?
A. Just me and Grandpa and Dolores.

Q. By your grandpa, you are referring to this man who is your mother's son.
A. Yes.

Q. For which we are going to have to get an anthropological explanation. O.K. Who was supporting you, then?
A. Nobody.
A. No.

Q. No?
A. No.

Q. You weren't receiving any kind of benefits from the tribe, or anything?
A. No.

Q. Who was supporting you with food and stuff?
A. I did weaving.

Q. You worked, then?
A. I guess you can call it work.

Q. You did weaving and you got money, food, what, for weaving?
A. Money and food.

Q. From whom?
A. From my weaving.

Q. Was that Navajo——
A. Navajo rugs.

Q. Navajo rugs. O.K. Is that a concern that has a place in Albuquerque or Gallup?
A. Gallup.

Q. Is that the Navajo Rug Company? What is the name of it?
A. My own, that I just sold it to the trading post.

Q. It is your own; is that what you are saying?
A. Every Navajo knows how to weave a rug.

Q. You would weave rugs.
A. We inherited this from our own relatives, taught us when we were kids.

Q. Are we talking about Navajo rugs?
A. Yes.

Q. So you became a weaver of Navajo rugs.
A. I had to do something to support myself.

Q. Does Rachel have a census number?
A. Yes.

Q. That's a Navajo census number?
A. Yes.

Q. Did you ever see Dr. Rock when you lived on the reservation, I mean on the reservation? Did you ever see him on the reservation when you lived on the reservation?

A. No.

Q. Did you ever see him in Phoenix when you lived over there?

A. No.

Q. Were you ever treated by Richard Rock for any ailment?

A. When I ran off the road he took x-rays of my ribs.

Q. When was this?

A. '76, I think. I don't remember, '76, it was after Rachel was born.

Q. Prior to the birth of Rachel you had never been a patient of his for any purpose at all?

A. If I got a cold, or something like that, he would give us samples, that's all.

Q. When you say "us", I assume you mean you and——

A. Dolores.

Q. ——Dolores. Had he ever examined Dolores after the first time. You said he referred her to Dr. Seelinger on neurological——

A. No.

Q. But he had given pills and samples.

A. Yes.

Q. What was the matter with your mother that she went to Dr. Rock?

A. Arthritis of the knee.

Q. Did you recommend Dr. Rock to her?

A. I talked to him about it, and he says bring her in.

Q. She has gone to him quite a few times, hasn't she?

A. Yes.

Q. But there came a time when you went to the motel for the first time to have sexual relations, didn't there?

A. Yes.

Q. When you decided to go to the motel and have sexual relations, who idea was it to go to the motel?

MR. KLECAN: I think she already answered that. I object.

A. My idea.

Q. Whose idea was it to go to the Travelodge Motel:

A. Mine.

Q. Your idea. O.K. Did Dr. Rock ever give you any money to pay for the motel room?

A. No.

Q. Are you registered to vote here?

A. No.

Q. Are you registered to vote anywhere?

A. On the reservation.

Q. At Window Rock, or Crownpoint?

A. Crownpoint.

Q. Would your records, like census number, and also Esther's be at Crownpoint?

A. Should be.

Q. Most of '74, then, you were living on the reservation, either at the BIA or at the hospital at Crownpoint Public Health Hospital or in your mother's house until September of '74.

A. Yes.

Exhibit "Y"

STATE OF NEW MEXICO COUNTY OF BERNALILLO

IN THE DISTRICT COURT

No. DR 79-01505

ESTHER ANTONIO, *Plaintiff*,

vs.

RICHARD ROCK, *Defendant*.

FIRST AMENDED COMPLAINT FOR PATERNITY

Plaintiff, ESTHER ANTONIO, for cause of action against Defendant, RICHARD ROCK, states:

1. That Plaintiff is a resident of the City of Albuquerque, Bernalillo County, State of New Mexico.

2. That Defendant is a resident of the City of Albuquerque, Bernalillo County, State of New Mexico.

3. Defendant, RICHARD ROCK, is the father of a certain child, namely, RACHAEL ANTONIO, born out of wedlock to the Plaintiff, ESTHER ANTONIO, on or about the 11th day of May, 1975, at Presbyterian Hospital, Albuquerque, New Mexico.

4. That by reason of §§ 40-5-1 et seq., N.M.S.A., 1978 Comp., Defendant, RICHARD ROCK, is obligated to contribute to the support of said child.

5. That the Defendant has acknowledged the paternity of the minor child at all times since her birth by contributing to the costs of the Plaintiff's pregnancy and confinement and by contributing to the costs of supporting the child since her birth.

6. That the contributions made by the Defendant toward the costs of supporting the child from May 11, 1975, until

the present do not comprise one-half of the total costs of supporting said child, as a result of which Plaintiff is entitled to judgment against the Defendant is an amount to be determined by the Court based upon the evidence to be presented.

7. That the Plaintiff is unable to afford her attorney fees and costs for the bringing of this action.

WHEREFORE, Plaintiff prays for judgment against the Defendant declaring that the Defendant is the father of the child born to the Plaintiff, for judgment in the amount of one-half (½) the expenses of supporting said child until she reaches the age of majority, for reasonable attorney fees, for her costs incurred herein, and for such other and further relief as to the Court seems proper.

MOTION TO DISMISS

COMES Now the Defendant Richard Rock, and, pursuant to Rule 12 of the New Mexico Rules of Civil Procedure, moves that this Court for its Order dismissing the plaintiff's First Amended Complaint with prejudice, and as grounds for this Motion states:

1. That the First Amended Complaint fails to state a claim upon which relief can be granted;

2. That the Court lacks jurisdiction over the parties;

3. That the Court lacks jurisdiction over the subject matter of this case.

WHEREFORE, the Defendant requests that the First Amended Complaint be dismissed with prejudice, and that judgment be entered in the defendant's favor.

Respectfully submitted,

ANSWER TO FIRST AMENDED COMPLAINT

COMES Now the defendant, Richard Rock, and answers the plaintiff's First Amended Complaint as follows:

1. That the defendant lacks knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the First Amended Complaint and therefore denies same.

2. The allegations in paragraph 2 of the First Amended Complaint are admitted.

3. The allegations contained in paragraph 3 of the First Amended Complaint are denied.

4. That the allegations contained in paragraph 4 of the First Amended Complaint are denied.

5. That the allegations contained in paragraph 5 of the First Amended Complaint are denied.

6. That the allegations contained in paragraph 6 of the First Amended Complaint are denied.

7. That defendant lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraph 7 of the First Amended Complaint and therefore denies same.

AFFIRMATIVE DEFENSES

1. The Court lacks jurisdiction over the parties herein.

2. The Court lacks jurisdiction over the subject matter herein.

3. Plaintiff's action is barred by the statute of limitations.

4. The First Amended Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendant prays for judgment in his favor, for dismissal of this action, for his costs, and for such other relief as to the Court seems proper.

Respectfully submitted,

KLECAN & ROACH, P.A.

ORDER

THIS MATTER having come before the Court on the Defendant's Motion to Dismiss, the Court having heard the evidence and arguments of Counsel and being otherwise advised in the premises, FINDS that the State of New Mexico has not delegated to the Federal Government exclusive jurisdiction of paternity suits brought in the State of New Mexico;

This State has retained jurisdiction and the Plaintiff exercises a valid and proper right in this Court.

IT IS THEREFORE ORDERED that the Defendant's Motion to Dismiss be, and hereby is, denied.

_____
District Judge

Submitted:

_____
Leo C. Kelley, Attorney for Plaintiff

Verified Allegations That Jurisdiction Does Not Lie in State Courts of New Mexico, Made to the Supreme Court of New Mexico August 14, 1981 in Request for Writ of Prohibition Which Was Denied.

"That the Complaint filed herein by Esther Antonio alleged that she was residing in Bernalillo County, New Mexico at the time of filing, April 6, 1979, and alleged that the child, Rachel Antonio, was born May 11, 1975, in Presbyterian Hospital. The Complaint and Amended Complaint were secret as to where the residence of the Plaintiff at the time during that period when conception could have taken place.

It has now been disclosed through documents obtained, June 11, 1981, that during the period when the conception of Rachel Antonio was possible, Esther Antonio was a resident on the Navajo Reservation and was not residing, or a resident of New Mexico at that time.

A copy of this document signed by Esther Antonio is attached and shows that the "date arrived in this state" was "November 21, 1974". That prior to that, the document shows that Plaintiff Esther Antonio resided at the "Continental Divide" which was her address on the Navajo Reservation where she is registered as a full-blooded Navajo Indian. That she was a resident on the Navajo Reservation all her life is shown by the document wherein she states that she had resided there "36 years, off and on", "Exhibit D".

That the said evidence shows her to have been a member of the Navajo Nation with her residence on the Residence on the Reservation at the time Rachel Antonio could have been conceived.

That an Affidavit of Dr. Bennett who cared for Esther Antonio from January 20, 1975, until the delivery of Rachel Antonio on May 11, 1975, is attached hereto showing that conception was not possible in November, 1974, "Exhibit E".

That her legal residence being on the reservation at the times aforesaid did not confer jurisdiction upon the New Mexico State Courts.

That Esther Antonio has filed an Affidavit below alleging without being asked to do so, that she registered in an Albuquerque motel on several occasions, the dates at which she could not remember, during the month of September, 1974, and not before and requested the Petitioner to come to such transient motel where she asserts sexual relations occurred. Exhibit —— shows that she was residing on the Navajo Reservation, and not in the State of New Mexico until November, 1974.

That until June, 1981, it was not known that the Plaintiff below was residing on the Reservation before November 21, 1974.

By Resolution CJA-1-5, passed January 6, 1959, the Navajo Tribal Council adopted as Tribal law the regulation of the Department of the Interior contained in 25 C.F.R., § 11.30 which states:

> "The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child."

That her legal residence being on the Reservation aforesaid did not confer jurisdiction upon New Mexico state courts."

ARGUMENT AND AUTHORITIES

Point I

The Status of the Child as an Enrolled Member of the Navajo Tribe Is Not Disturbed by Any Decision in the State District Court.

The District Court has jurisdiction over the subject matter and persons in the cause of action of Esther Antonio v. Richard Rock, No. DR-79-01505. It is a paternity action to determine the status of Richard Rock with respect to the minor child of Esther Antonio. The Petitioner-Defendant, Richard Rock is not an Indian. This action in no way affects the tribal membership of the minor child of Esther Antonio, a full-blood Navajo. Under the Navajo Tribal Code, the child has automatic tribal membership. Therefore, the rights and benefits which accrue to the child as a result of membership are not disturbed by a determination of paternity by the District Court. 1 N.T.C. § 101 states:

> "The membership of the Navajo Tribe shall consist of the following persons: . . .
>
> (c) Children born to any enrolled member of the Navajo Tribe shall automatically become members of the Navajo Tribe and shall be enrollled, provided they are at least one-fourth degree Navajo blood."

The child whose paternity is to be determined was born to an enrolled member of the Navajo Tribe. The child's membership is automatic. Tribal membership is not an issue in the instant proceeding. Because tribal membership is not an issue before the Court, jurisdiction over the paternity determination in no way infringes on tribal self-government. The State District

* * * * * * * * * *

CONCLUSION

State Court jurisdiction is appropriate in this cause of action for the determination of paternity of the minor child of Esther Antonio. The Navajo Tribal Code affords this child automatic tribal membership because she was born to a full-blooded Navajo Indian. The determination of paternity will not disturb the status of the child with respect to the Navajo Tribe. Therefore, no tribal self-government is infringed upon. The issue before the State District Court is whether or not Richard Rock is the father of the child and will therefore be required to provide financial support.

The facts are that Richard Rock is not an Indian and that the cause of action arose outside the exterior boundaries of the Indian reservation. These two facts distinguish this case from those cases which have granted Tribal Court jurisdiction. Where the cause of action arose on Indian land and the defendant is Indian, Tribal Court jurisdiction is appropriate. This is not such a case, and the District Court has jurisdiction over the plaintiff, the defendant and this cause of action.

Leo C. Kelly
P.O. Box 304
Albuquerque, New Mexico 87103
505-842-9400
Attorney for Respondent

Exhibit "F"

STATE OF NEW MEXICO COUNTY OF BERNALILLO

IN THE DISTRICT COURT

No. DR 79-01505

ESTHER ANTONIO, *Plaintiff*,

vs.

RICHARD ROCK, *Defendant*.

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

JOHN A. BENNETT, M.D., being duly sworn upon his oath deposes and states:

I am a physician praciticing in the City of Albuquerque, New Mexico, specializing in Obstetrics and Gynecology.

I attended college at the Unitersity of Utah, where I graduated in 1958. Thereafter, I attended Cornell Medical School, where I graduated in 1961. I completed a two year internship/residency at Roosevelt Hospital in New York City, New York. I completed a three and one half year residency in Obstetrics and Gynecology at Woman's Hospital in New York City. I specialized in the practice of Obstetrics and Gynecology in the United States Army for three and one fourth years. I have been actively practicing specializing in the area of Obstetrics and Gynecology in Albuquerque, New Mexico since June, 1970. I am a board certified Fellow of the American College of Obstetrics and Gynecology. I have been licensed to practice medicine in New Mexico since 1970.

Esther Antonio, the plaintiff in this case, has been a patient of mine since September, 1972, at which time she was referred to me by Dr. Richard Rock.

The first time I saw Ms. Antonio for her pregnancy was January 20, 1975. At that time I obtained a history from her which indicated that her last menstrual period had been August 24, 1974, approximately twenty one and one half weeks before the first visit. The patient's uterus was already at the umbilicus. The baby's heart was audible with a regular fetoscope. Ms. Antonio subsequently came into labor on May 11, 1975, but never dilated because she was suffering from toxemia, so a Caesarean Section was performed on May 11, 1975. A six pound, six ounce baby was delivered.

On the first obstetrical visit on January 20, 1975, a baby heart was heard with a regular fetoscope which would be consistent with at least twenty weeks gestation, i.e., from the last menstrual period, i.e, eighteen weeks from conception. Ms. Antonio was felt not to be any more than twenty-two weeks, that is, twenty weeks from conception.

On the basis of a delivery date of May 11, 1975, of a baby weighing six pounds, six ounces, which is slightly less than average, but at term (38-42 weeks), it is my opinion to a reasonable medical probability, that Esther Antonio conceived on or about the last week of August or the first week in September, 1974. Given all of the physical facts which I have stated, the outer limits of time at which she could have conceived is plus or minus two weeks.

Further, that the above statements are true and correct as to the best knowledge and belief of the affiant.

/s/ John A. Bennett, M.D.
John A. Bennett, M.D.

Subscribed and sworn to before me this 4th day of August, 1981.

/s/ Jim Buskirn Wagner
Jim Buskirk Wagner
Notary Public

My Commission Expires:
11-17-84

Exhibit "E"

The Navajo Tribe has expressly claimed jurisdiction over paternity actions. The jurisdiction manual of the Navajo Tribe provides that the Tribe has jurisdiction over all domestic relations matters involving Indiana T.7, § 133 of the Navajo Tribal Code, 1969 Edition. By Resolution CJA-1-5, the Navajo Tribal Council adopted as Tribal Law the regulation of the Department of the Interior contained in 25 C.F.R. § 11.30 which states:

> The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child.

The Navajo Tribal Council has claimed original jurisdiction to the Court of Indian Offenses of all proceedings to determine the paternity of Navajo children.

New Mexico's Supreme Court, in its discussion in *Natewa v. Natewa* 84 N.M. 69, 499 P. 692 recognized this exclusive jurisdiction of the Navajo Nation on paternity actions involving its members.

25 U.S.C. § 1322 et seq is entitled, "Assumption by state of civil jurisdiction." This can only be done with the consent of the State and the Indian Nation. Neither the State of New Mexico nor the Navajo Nation have consented.

Exhibit "G"

Opposite the arrow is the date, stated by the mother as to when she entered the State of New Mexico.

Exhibit "K"

THE COURT: Okay, gentlemen, thank you.

I understand the position taken by the defendant in this case; however, I don't see this case as a quasi-criminal case at all. I see this basically as a civil action to establish paternity.

The statute referred to, before it would have any applicability, there's two conditions, one of which would have to come into being before there could be any liability. Number one, there would have to be a judicially established paternity, which is the purpose of this lawsuit, or he would have had to acknowledge in writing that he was the father. And in addition to that, there would still have to be shown, before he could ever be convicted of any crime, that he did this without any lawful excuse as far as providing shelter, etcetera, etcetera.

I don't see any in that relationship. I don't think that the questions that are asked for purposes of establishing an acquaintanceship or relationship, intercourse or matters of that kind are protected under the Fifth Amendment.

It will be the order of the Court that Doctor Rock answer the related questions that are asked of him on his deposition.

I'll give you—I'll delay any entry of order on this for a period of five days, Mr. Klecan, which will give you a chance to get a writ of prohibition or any other extraordinary remedy that you think is appropriate, but it's the order of the Court that Doctor Rock answer the questions propounded to him on the deposition insofar as they are material and relate to the issues in this particular lawsuit.

Exhibit "XX"

1. Are you acquainted, Dr. Rock, with a lady named Esther Antonio?

A. 5th

2. Have you ever met a woman named Esther Antonio?

A. 5th

3. Have you ever met or are you acquainted with a child named Rachel Antonio?

A. 5th

4. Do you have knowledge of any person who had sexual intercourse with Esther Antonio during the months of July, August and September 1974?

A. We raise the 5th as to any knowledge about her so that would cover any question that would deal with her activities of any kind. We raise the 5th as to that question

5. Do you have evidence of any sort of information of any sort that the child Rachel Antonio, who Esther Antonio alleges was fathered by you, Dr. Rock, was fathered by any other individual?

A. We would raise the 5th as to any information of knowledge about her or what she did or didn't do. So we would raise the 5th as to that question.

6. Have you ever discussed the parentage of Rachel Antonio with Esther Antonio?

A. 5th

7. Has Esther Antonio ever told you that you were the father of Rachel Antonio?

A. 5th

8. Have you ever told anyone that you were the father of the child, Rachel Antonio?

A. 5th

9. Have you ever told Esther Antonio that somebody else was the father of Rachel Antonio?

A. 5th

(12) 10. Have you ever contributed any money to the support of the child, Rachel Antonio?

A. 5th

(13) 11. Did you ever give money to an attorney named Brad Zeikus to be conveyed to Esther Antonio?

A. 5th

(14) 12. Did you give money to Brad Zeikus for the purpose of paying the hospital a bill for expenses incurred in the birth of Rachel Antonio?

A. 5th

(15) 13. Did you ever visit with Rachel Antonio and Esther Antonio at Esther's apartment in the City of Albuquerque

A. 5th

(23) 14. Did she show you also a copy of any check from Attorney Brad Zeikus' office issued to Esther Antonio?

A. That question assumes an answer to the other question to which there has been an objection made.

(34) 15. To your knowledge, Dr. Rock, did your wife discuss this case with the F.B.I. sometime after February 12, 1979?

A. Again, the only way that he would find out presumably would be a question of a confidential privileged communication between husband and wife, so that in addition to the 5th Amendment, you are tying it into the facts of this particular lawsuit. There would be at least two reasons why it would be objectionable.

(35) 16. Have you ever had sexual relations with Esther Antonio

A. 5th

(36) 17. During the period 1964 to 1966, did you meet Esther Antonio?

A. 5th

(37) 18. During the period 1964 to 1966, did you have sexual relations with Esther Antonio?

A. 5th

(38) 19. How often during the period 1964 to 1966, did you have sexual relations with Esther Antonio?

A. 5th

(39) 20. If you did not meet Esther Antonio during the period 1964 through 1966, when did you first meet Esther Antonio?

A. 5th

(40)21. When did you have sexual relations with Esther Antonio for the first time?

A. 5th

(41) 22. When did you first have sexual relations with Esther Antonio in the City of Albuquerque?

A. 5th

(42) 23. How frequently did you have sexual relations with Esther Antonio during the calendar year 1974?

A. 5th

(45) 24. Other than monies that you may have given Brad Zeikus for conveyance to Esther Antonio for the support of Rachel Antonio, did you give Esther Antonio other money in the form of cash for the support of Rachel Antonio?

A. 5th

ARTICLE 5

Illegitimacy and Support

Sec.

40-5-1. Child's right to support.

40-5-2. Amount of support; liability for expenses.

40-5-3. Action to recover equal shart of support; demand limitation.

40-5-4. Third parties' right to sue.

40-5-5. Discharge of obligations; adoption of child.

40-5-6. Proceedings not exclusive.

40-5-7. Proceedings to compel support; who may bring.

40-5-8. When proceedings may be instituted.

40-5-9. Jurisdiction of proceedings to compel support and establish parentage; form of complaint; summons; procedure.

40-5-10. Continuance until child born.

40-5-11. Testimony by father and mother permitted.

40-5-12. Failure of defendant to appear; trial to proceed.

40-5-13. Death or absence of mother; trial to proceed; dying declaration.

40-5-14. Death of a parent; prosecution against personnel representative.

40-5-15. Judgment of parentage and support.

40-5-16. Payments to mother or trustee; reports of trustee.

40-5-17. Enjoining transfer of property; attachment and garnishment; judgment a lien on real estate.

40-5-18. Agreement for support; approval of court; bar of other remedies.

40-5-19. Continuing jurisdiction of court.

40-5-20. Failure to support child; penalty.

40-5-21. Failure to comply with judgment for support of child; penalty.

40-5-22. Criminal prosecution; civil proceedings not affected.

40-5-23. Limitation of actions.

40-5-24. Foreign judgments; suit in this state.

40-5-25. References to illegitimacy; sufficiency.

40-5-26. Application of act.

40-5-1. Child's right to support.

The father and mother of a child born out of wedlock are jointly and severally liable for the support of the child until he reaches the age of majority.

40-5-4. Third parties' right to sue.

The obligation of the father or mother creates also a cause of action on behalf of their legal representatives or on behalf of third parties furnishing support or defraying the expenses thereof where parentage has been judicially established, or where parentage has been acknowledged in writing or by the part performance of the parental obligations.

40-5-5. Discharge of obligations; adoption of child.

The support obligation of a parent is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement. The adoption of the child into another family discharges the obligation for the period subsequent to the adoption.

40-5-7. Proceedings to compel support; who may bring.

The proceeding to compel support and establish parentage of the child may be brought by a parent or if the

child is or is likely to be a public charge, by the state of New Mexico. After the death of the complainant parent or in the case of his disability, it may also be brought by the child, acting through his guardian or next friend. If the proceeding is brought by the public authorities, the parents may be made defendants.

40-5-9. Jurisdiction of proceedings to compel support and establish parentage; form of complaint; summons; procedure.

Jurisdiction over proceedings to compel support and establish parentage of the child is vested in the district court of the county in which either parent permanently or temporarily resides, or is found. It is not a bar to the jurisdiction of the court that the complainant parent and child reside in another state. The complaint shall be filed in the district court having jurisdiction and shall charge the person named as defendant with being the father or mother of the child and demand that such person be compelled to support the same, and it may contain such facts relating to the property of the defendant as are within the knowledge of the complainant.

Summons shall be issued and served as in other civil actions, and the cause shall be tried by jury, unless jury trial be waived by the parties. The procedure shall be the same as in other civil actions.

40-5-11. [Testimony by father and mother permitted.]

Both the mother and the alleged father shall be competent, but not compellable, to give evidence and if neither gives evidence, he or she shall be subject to cross-examination.

40-5-15. Judgment of parentage and support.

If the finding or verdict be against the defendant, the court shall give judgment against him declaring parentage and for support of the child. The judgment shall be

for annual amounts, equal or varying, having regard for his obligation under Section 40-5-2 NMSA 1978 as the court directs, until the child reaches the age of eighteen years or sooner dies. The payments may be required to be made at such period or intervals as the court directs. In addition to the judgment for support, there may be a judgment for reasonable attorney fees.

40-5-19. [Continuing jurisdiction of court.]

The court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof, until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine custody in accordance with the interests of the child.

40-5-20. Failure to support child; penalty.

The failure of either spouse, without lawful excuse to support the child where parentage has been judicially established, or has been acknowledged in writing or by the part performance of parental obligations, is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the penitentiary for not exceeding two years, or by both such fine and imprisonment. Proof of the omission by either parent to furnish necessary food, clothing, shelter, medical attention or other remedial care for his child is prima facie evidence of failure to support the child without lawful excuse.

40-5-21. Failure to comply with judgment for support of child; penalty.

The failure, without lawful excuse, of a parent to comply with and carry out a judgment for the support of the child, whether the child be a resident in the jurisdiction where the judgment was rendered or not, is punishable by a fine not exceeding one thousand dollars ($1,000),

or by imprisonment in the penitentiary for not exceeding two years, or by both such fine and imprisonment, at the discretion of the court.

40-5-22. Criminal prosecution; civil proceedings not affected.

A criminal prosecution brought in accordance with the provisions of Section 40-5-20 NMSA 1978 or Section 40-5-21 NMSA 1978, shall not be a bar to, or be barred by, civil proceedings to compel support.

40-5-23. Limitation of actions.

Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child unless paternity has been judicially established or has been acknowledged by the father in writing or by the furnishing of support, except that there shall be no time limitation on proceedings initiated by the state.

Verified assertion to Supreme Court of New Mexico of August 14, 1981 relating to Fifth Amendment protection stated:

> That an examination of the questions that the court has ruled must be answered shows that the 5th Amenment should be allowed as a bar to answering most if not all of said questions, ones for which the 5th Amendment is properly invoked. The basis for the use of the 5th Amendment for this New Mexico case is found in N.M.S.A. 1978 Annotated, Section 40-5-20 and perhaps other statutes. The statute states, "The failure of either spouse, without lawful excuse, to support, the child, whose parentage has been judicially established, or has been acknowledged in writing or by the past performance of parental obligations is punishable by a find not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the

penitentiary for not exceeding two years, or by both such fine and imprisonment. Proof of the omission by either parent to furnish necessary food, clothing, shelter, medical attention or other remedial care for his child is prima facie evidence of failure to support the child without lawful excuse."

CERTIFICATE OF LIVE BIRTH

STATE OF NEW MEXICO

130-75-007061

1. PLACE OF BIRTH
a. COUNTY: Bernalillo
b. CITY OR TOWN: Albuquerque
c. FULL NAME OF (If NOT in hospital or institution, give street address or location) HOSPITAL OR INSTITUTION: Presbyterian Hospital Center

2. USUAL RESIDENCE OF MOTHER (Where she usually lives)
a. STATE: New Mexico
b. COUNTY: Bernalillo
c. CITY OR TOWN: Albuquerque
d. STREET ADDRESS (If rural, give location): 310 Pennsylvania S E

3. CHILD'S NAME (Type or Print)
a. (First)
b. (Middle)
c. (Last): Antonio

4. SEX: Female
5a. THIS BIRTH: Single [X] Twin [ ] Triplet [ ]
5b. IF TWIN or TRIPLET (This one born) 1st [ ] 2nd [ ] 3rd [ ]
6. DATE OF BIRTH (Month) (Day) (Year): May 11, 1975

FATHER OF CHILD

7. FULL NAME a. (First) b. (Middle) c. (Last)
8. COLOR OR RACE
9. AGE (At time of this birth) YEARS
10. BIRTHPLACE (State or foreign country)
11a. USUAL OCCUPATION
11b. KIND OF BUSINESS OR INDUSTRY

MOTHER OF CHILD

12. FULL MAIDEN NAME a. (First): Esther b. (Middle): Ruth c. (Last): Antonio
13. COLOR OR RACE: Navajo Indian
14. AGE (At time of this birth): 37 YEARS
15. BIRTHPLACE (State or foreign country): New Mexico
16. PARENTS MAILING ADDRESS FOR REGISTRATION NOTICE: 310 Pennsylvania S E, Albuquerque, New Mexico 87106
17. INFORMANT'S NAME AND ADDRESS: Esther Ruth Antonio

I hereby certify that the child was born alive on the date stated above at 7:51P

SIGNATURE: John A. Bennett, M.D.
ADDRESS: Albuquerque, New Mexico

18b. ATTENDANT AT BIRTH: M.D. [ ] [ ] (Other) (Specify)
18c. DATE SIGNED: 5/16/75
19. DATE RECEIVED BY LOCAL REG.
20. REGISTRAR'S SIGNATURE
21. DATE ON WHICH CHILD'S NAME ADDED BY (Registrar)

CERTIFIED COPY OF VITAL RECORD

STATE OF NEW MEXICO COUNTY OF SANTA FE

Michael J. Burkhart, Director
Health Services Division
Health and Environment Department

This is a true and exact reproduction of the original document officially registered and placed on file in the Vital Records Section of the Health and Environment Department in Santa Fe, New Mexico, and issued under the authority of the State Registrar of Vital Statistics.

DATE ISSUED: OCT 16 '79

Michael W. Ammann
Michael W. Ammann
State Registrar
Vital Statistics

DO NOT DUPLICATE THIS COPY BY ANY MEANS WHATSOEVER.

SECURITY PAPER DISPLAYING THE RAISED SEAL OF THE STATE REGISTRAR. (NMSA, 1953 Sec. 14-4-4.8)

Best Copy Available

Inspector has arrow to the date, noted by the author as to when she entered the state of New Mexico.

UNIVERSITY HEIGHTS HOSPITAL
1127 UNIVERSITY BLVD., N.E.
ALBUQUERQUE, NEW MEXICO 87102

AN EQUAL OPPORTUNITY EMPLOYER

APPLICATION FOR EMPLOYMENT